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CIVIL RIGHTS

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BY

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PREPARED FOR DELIVERY

BEFORE THE

CHICAGO BAR ASSOCIATION

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It is indeed an honor to address this Association tonight for Chicago is the home of great lawyers whose fame has many times been spread around the country because of your preeminence in the court room and your tradition of trial experience.

I have selected as my subject one which I hope will interest you for it is extremely important in the life of our country today.

I am to speak of "Civil Rights" -- always an important matter to all of us, not only as lawyers, but as citizens of the United States, and even more so in these troublesome post-war days.

I want to tell you of the role the Department of Justice plays in protecting those basic rights of personal liberty, guaranteed to each of us by our Constitution and laws.

In this difficult period when our energies are turned to the solution of the severe economic and social problems which beset us, we must be ever mindful of our rights and obligations as American citizens, pledged mutually to the preservation and extension of democracy and liberty for all.

It is especially fitting that we take stock of the condition of our civil rights on this day, June 21st -- for this is indeed an important, though generally unrecognized, date in our history.

On June 21, 1788 -- one hundred and fifty-eight years ago today -- the Constitution became legally effective when New Hampshire, by convention vote, won the signal honor of becoming the ninth ratifying state, thereby constituting the majority required for its adoption.

Yet that Constitution adopted by the people was incomplete and did not fully express the public will.

Bills of rights guaranteeing the integrity of person and property had already been adopted in many states.

While the Federal Constitution was still in the process of ratification, a great public demand had arisen for similar guarantees against Federal governmental interference with basic rights.

In the First Congress of 1789, the first ten amendments, our Bill of Rights, were speedily passed and submitted to the nation, practically as a part of the original Constitution.

In this fashion there was allayed the general misgiving that, without such restrictive provisions, the new national government might assume power to interfere with or infringe upon those rights which the Declaration of Independence had deemed inalienable and for the preservation of which Americans had taken up arms in 1776, just as they were to take them up again in 1941.

Freedom of religion, speech and press, right of assembly and petition, freedom from unreasonable search and seizure, right of due process, prohibition against taking private property without fair compensation — these were and still are the traditional fundamental safeguards of the individual against oppression and abuse at the hands of his government.

The Supreme Court once said that the first ten amendments "were not intended to lay down any novel principles of government, but simply to embody certain guarantees and immunities which we had inherited from our English ancestors". (Robertson v. Baldwin, 165 U.S. 275, 281 (1897))

These guarantees were primarily negative and aimed at the Federal government only.

They were an expression of the fear and distrust in which centralized government was held.

They were a product of the reaction against the yoke of tyranny which the Revolutionary War had only recently thrown off, just as was the entire system of governmental checks and balances running through the Constitution.

It must be remembered that the Bill of Rights did not afford protection to the individual's liberties against the actions of State governments or individuals, nor did it empower the National government to take affirmative action to protect those liberties.

Until the Civil War the individual looked only to his State as the source and guardian of his personal rights.

This was one important phase of the development of the balance of power between States and the Federal government.

The problems growing out of the Civil War seriously altered that balance of power, particularly in the attempt to establish real freedom for the recently-freed negro and protect him in the exercise of that freedom.

It was evident that the old order had to change -- that the States could not or would not fulfill their obligations to secure individual liberty for all classes and kinds of persons.

In the decade that followed the war three new amendments were added to the Constitution -- the 13th, 14th, and 15th -- freeing the negroes, making them citizens, providing for due process by the State, and ensuring the rights of all citizens to vote.

The rights so guaranteed were minutely spelled out in five statutes, seriously penalizing state officers and private persons violating those rights.

Drastic social and legal changes were brought about by these measures, but a discussion of those changes would be of historic and academic interest only, for in the ensuing thirty-five years the interest of the government in protecting civil liberties waned.

The protections so carefully spelled out were emasculated by such judicial holdings as the Slaughterhouse and Civil Rights cases, and finally by outright repeal of large portions of the legislation by Congress.

As a result, we now have on the statute books only fragments of the original acts.

In pointing this out, it is my purpose to indicate the limited scope and jurisdiction of the Department of Justice in its sincere attempt to act as protector of civil rights.

I am doing this to correct a popular misconception as to the Department's powers.

Every day my Department receives numerous complaints from groups, individuals, and even State officers concerning violations of personal rights -- two thousand, six hundred ninety-nine alone in the first half of the present fiscal year.

The great majority reveal on their face that no Federal jurisdiction is present.

In comparatively few instances do we have authority to investigate and prosecute.

For these statutory fragments which I have mentioned are even today the sole authority under which I, as Attorney General, can take action in the civil liberties field.

Under Title 18 of the Criminal Code are two sections, - Sections 51 and 52 - which deal respectively with conspiring to harm citizens in the exercise of certain civil rights, and with depriving persons of civil rights under color of law.

These two sections and an antipeonage section (18 U.S.C. 443, 444) form the basis for substantially all the prosecutions brought by the Department for civil liberties violations.

For many years these sections were little used and almost forgotten.

In 1939 a Civil Rights Section was established in the Criminal Division of the Department of Justice.

Its directives were to be found principally in the statutes I have just mentioned.

Its task has been and is to reestablish and revive those sections as effective instruments for the protection of civil liberties.

After seven years of vigorous prosecution under these statutes, principally in election fraud, police brutality, and peonage cases, a substantial body of case law has been built up.

Yet almost every case is still a test of a point of law as well as a test of our power to present sufficient evidence to gain a conviction.

I feel that it is not amiss to take time to quote these two sections to you, especially for the benefit of those who have had no occasion to review them recently. Section 51 of Title 18 provides:

Conspiracy to injure persons in exercise of civil rights.

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any

right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than \$5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

The criminal conspiracy under this section is one which injures or oppresses United States citizens - not aliens - in the exercise of federally-secured rights.

Under such holdings as the Slaughterhouse cases, the rights to life, liberty, and property, encompassed in the 14th Amendment, are not considered federally-secured rights since they flow for the most part from the States.

They are incidents of State, not national, citizenship and have been held not to be within the scope of section 51.

A further weak point in this section is that the Constitution deals primarily with relationships between the private person and government, rather than with relationships of private persons, one to another.

There are few constitutional rights protected against infringement by other individuals.

In the absence of special circumstances, Section 51 does not protect the individual or the minority against mob or ruffian activity.

While such attacks may amount to a deprivation of freedom of speech or other rights guaranteed by the Bill of Rights, these rights are rights

protected only against official action, not private action.

Among the rights which have been held to warrant protection against the acts of individuals as well as officials are the rights to run for federal office, to be free from involuntary servitude, to have access to the federal courts, to be a witness in the federal courts, to inform federal officers concerning federal offenses, to journey to the national capital on federal business, and possibly most important of all, the right to vote and to have that vote counted as cast.

The Civil Rights Section has always been in the vanguard of the struggle to ensure that every qualified voter can freely and without fear, exercise his constitutional right and his first duty as a citizen -- his right to vote.

Such landmarks in constitutional law as Classic v. United States, and Smith v. Allwright, making the right to vote real and meaningful for the negro in particular, but for all Americans in the larger sense, are among the more outstanding successes of the Civil Rights Section.

Those decisions are a tribute to the painstaking efforts and vigilance of the Section in performing its important job.

I, as Attorney General, will use every force at my command to see to it that in the primaries and forthcoming elections, no American citizen will be deprived of his vote because of his race or color.

I have already instructed the United States Attorneys and interested Federal agencies to be especially alert and forceful to prevent and prosecute violations of the law.

In recent years, new rights have been created by Congress and extended, in many instances, to classes of persons hitherto subject to private intimidation.

The Social Security and Wages and Hours Laws confer federal benefits on qualified persons.

Labor, which in an early case had been denied the protection of Section 51 against interference with its right to organize (United States v. Moore, 129 Fed. 630), now has, under the conditions set out in the Wagner Act, a federally-protected right to organize for collective bargaining.

Rights to the use of housing projects constructed under the Lanham Act, rights of veterans to reemployment under the Selective Service Act -- these are all rights secured by federal statute, against private as well as official action.

They represent a real broadening of the field of federal civil rights and serve as evidence of a growing and ever-strengthening realization of the importance of civil rights generally.

The Department is fully alert to the necessity of safeguarding these new rights, and will do all in its power to afford full protection to their exercise.

Section 52 of Title 18 includes the larger number of the constitutional guarantees - the 14th and 15th Amendments as well as the Bill of Rights. It reads as follows:

Depriving citizens of civil rights under color of State laws.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected

by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

Under this section we prosecute anyone who, clothed with State or Federal power, wilfully misuses that power to deprive any person of such liberties as freedom from personal restraint, freedom of speech, press, and religion, freedom to assemble peaceably, to petition the government, to pursue a lawful calling, to acquire and use knowledge, to establish a home, or to move freely from state to state.

Rights of due process are also included -- the right to a real hearing, the right to real counsel in a criminal prosecution, the right to a jury from which members of the defendant's race have not been purposely excluded.

This statute has been a powerful weapon against local sheriffs, police officers and other officials who would set themselves above the law and substitute trial by ordeal, or the "kangaroo court", for trial by law in dealing with the friendless, the ignorant, the unpopular, or the unorthodox.

This eighty-year old statute was construed by the Supreme Court during the past year in the case of Screws v. United States, 325 U.S. 91 (1945).

This was an appeal from a conviction which we obtained against a Georgia Sheriff and his deputy.

Mr. Justice Douglas termed the case "a shocking and revolting episode in law enforcement".

These officers brutally murdered a young negro prisoner whom they had arrested on a trumped-up charge.

Their conviction under Section 52 - the only statute under which we could act, despite the lightness of its penalty for such a grave crime - was reversed by the Supreme Court and a new trial ordered.

Four separate opinions were rendered, in no one of which did more than four judges agree.

The confusion and uncertainty arising from the court's disposition of the case have cast a cloud over the prosecution of future cases under this statute.

Under the majority's interpretation of the word "willful" in Section 52, a state official must, at the time he deprives another of some established federal right, have more than a general bad purpose or evil intent to do wrong.

He must have the purpose at that time of depriving his victim of a specific federal right - that is, a right which "has been made specific either by the express terms of the Constitution or laws of the United States or by decision interpreting them".

The trial court must charge the jury on wilfulness, and the jury must believe beyond a reasonable doubt, from all the evidence, that the defendant had the purpose wilfully to deprive the victim of the specific right in issue.

The immediate effect of the court's narrow interpretation of the statute is perhaps best evidenced in the verdict of acquittal returned by the jury in the retrial of the case.

These matters which I have discussed represent some of the problems we face daily in determining whether we can investigate a civil rights complaint or take other action.

Surely, Sections 51 and 52 are imperfect statutory authority upon which to ground a comprehensive and consistent civil liberties program.

Yet we must continue to use that authority to the best of our abilities so as to make civil liberty in America secure and meaningful.

Your Government can and will do all in its power, but the problem is not primarily a governmental one.

Tolerance is not a matter of law enforcement.

To quote Mr. Justice Murphy:

"The Golden Rule cannot be made effective by United States Marshals".

The certain and sole protection of our rights and liberties rests in the power of public opinion.

Just as it is the obligation of the Department of Justice to enforce the civil rights statutes in all situations in which they are applicable - and enforce them for all the people of every race, creed or political faith - even more is it the duty of every American to enforce and practice in his daily life the American principles of tolerance and fair play, which are our heritage and the hallmarks of our civilization.

It is even more the duty of every American to see to it that his community, his state, his federal government, constantly affirm and apply those principles.

The task is one of individual and community effort.

The task is made doubly difficult since we must struggle to preserve civil liberties not only for those whom we like and with whom we agree, but as well for those we do not like and with whom we do not agree.

This we must do if our democracy is to be more than a mere paper formula - if it is indeed to serve as a dynamic way of life, if we are seriously to put into practice our beliefs in the health of conflicting ideas and the worth and dignity of the individual.

Our civil rights are basic to our way of life, and they will endure only so long as we continue to place our faith in them and maintain the will to protect them.

No governmental technique or machinery can guarantee or preserve the democratic ideal.

The Government can do little without the full support of community public opinion.

The Government cannot have its officers in every village and hamlet to prevent police brutality or the pushing around of minorities.

Nor would it indeed be salutary were that so, for this is not a "police state".

The leaders of public opinion - church, press, labor, business, and we lawyers - must insist that our local officers enforce the law with even-handed justice and prevent violations before they occur.

The goal towards which we of the Department of Justice work is to bring local officers to the realization that violations of civil rights are their problem.

We must have the assistance and cooperation of local citizens to warrant any degree of success.

One of the greatest dangers, in my opinion, to civil liberties of our fellow-citizens and one which should be taken literally by all the members of our profession, is the method of communism and fascism to shackle democracy by indirection.

By this I mean that we must be alert as officers of the court to see the difference between sincere and honest protest of groups of our citizens against injustice and the effort of these outside ideologists to stir up

trouble according to the old plan of "divide and rule".

No one but a complete "crack-pot" can be deluded by what we see going on today.

We know that there is a national and international conspiracy to divide our people, to discredit our institutions, and to bring about disrespect for our government.

Why should we blind ourselves to obvious facts?

When we see the same statements complete as to their ironical falsehood, appearing upon the same day in revolutionary papers in London and New York, we cannot help but realize that here is a deep-seated and vicious plot to destroy our unity — the unity without which there would be no United States.

We know full-well what communism and fascism practice — sometimes one taking the cloak of the other.

We know that in the Black Bible of their faith they seek to capture the important offices in the labor unions, to create strikes and dissensions, and to raise barriers to the efforts of lawful authorities to maintain civil peace.

I am told that in the councils of many labor unions, wherein deliberations are screened from the public, identical tactics, staged with acute parliamentary skill, are used to disconcert and disrupt proceedings in the hope that the communists or fascists, or both — for I see no difference in them — may achieve final power.

Small groups of radicals, well-coached in a prearranged plan, are using party-line methods in identical activity so that they can speak to the

people as a whole, not in open avowal of their aims, but with the voice of the honest workingman.

No country on earth, and no government, can long endure this vicious attack.

I say to you that they are driving law enforcement in this country to the end of its patience.

They are driving good Americans to the end of their patience.

I speak these words of solemn warning because you and I know that the patience of the American people is nothing to trifle with.

We are accustomed to look on the better side of things and to give the other fellow the benefit of the doubt.

We lean backwards in our protection and in our interpretation of civil liberties, but the world knows there is nothing more devastating than the wrath of free men aroused.

We shall proceed, through lawful means of course, to protect our dearly won democracy against those who would lock it up in a concentration camp under the guise of world revolution.

We lawyers have an important and responsible part in protecting the whole of our people against the encroachments of those who would delude and then subjugate them.

Our profession stands like twin bridge-heads across the river of the present.

On one side we find lawyers like myself intent upon the enforcement of the law and the protection of our people and on the other side, we find those in private practice whose talents are available to those who would engage them.

There are two sides to every question and there are lawyers on both sides.

The high responsibility of the practice of law demands that we view the present with open eyes so that we may not be blind in the future.

We all know the mockery and travesty of the Nazi courts and how our honored profession under that regime became a bitter jest.

We know that in the tribunals of communism the forced confession and idolatry of the tyrants are held forth as the will of the state and all pretense at orderly justice is dropped.

We lawyers are in the majority of the people who make the laws, who enforce the laws, and who defend those unjustly treated by the laws.

Our responsibility is boundless.

I do not think there is anyone more subject to censure in our profession than the revolutionary who enters our ranks, takes the solemn oath of our calling, and then uses every device in the legal category to further the interests of those who would destroy our government by force, if necessary.

I do not believe in purges because they bespeak the dark and hideous deeds of communism and fascism, but I do believe that our bar associations, with a strong hand, should take those too brilliant brothers of ours to the legal woodshed for a definite and well-deserved admonition.